

## **REMARKS**

### **A. Background**

The present Amendment is in response to the Office Action mailed April 15, 2008. Claims 11 and 24 were previously canceled and claims 3, 4, 9, 10, 13, 14, 19, and 20 were previously withdrawn. Claims 12, 18, 20, and 25 are canceled, claims 1, 15, and 23 are amended, and new claims 26 and 27 are added<sup>1</sup>. Claims 1-2, 5-8, 15-17, 21-23 and 26-27 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant's request that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **B. Prior Art Rejections**

#### **1. Rejections Under 35 U.S.C. §103**

The Office Action rejected claims 1, 2, 5, 6, 12, 15-18, 21-23, and 25 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. EP 1057460 (*Tower*) in view of U.S. Patent No. WO96/26682 (*Globerman*) and U.S. Patent No. 6,071,305 (*Brown*). Applicant respectfully traverses this rejection.

In response to the Office Action, Applicant has amended independent claim 1 to recite, in part, "a stent having a plurality of tubular members, each tubular member formed into a circumferential ring." In addition, independent claims 15 and 23 have been amended to

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<sup>1</sup> Support for these amendments and new claims may be found throughout the specification.

incorporate similar elements. Applicant respectfully submits that the prior art references cited in the Office Action do not disclose, teach, or suggest this limitation.

Rather, in direct contrast, the references disclose, at most, the use of a single tubular member. (See, *Globerman*, Figure 5; *Brown*, Figures 1, 2.) Applicant respectfully submits that the single tubular member disclosed by *Globerman* and *Brown* are not the same as “a plurality of tubular members, each tubular member formed into a circumferential ring,” as recited, in part, by claim 1, and as similarly required by claims 15 and 23.

Because the cited references fail to teach or suggest each and every element of claims 1, 15, and 23, Applicant respectfully requests that the rejection under § 103 of claims 1, 15, and 23 be withdrawn. Furthermore, the pending dependent claims are allowable for at least the same reasons.

Applicant also traverses the Examiner’s rejection for obviousness on the grounds that the Examiner’s combination of *Tower* with *Globerman* and *Brown* is improper. *Tower* and *Globerman*, specifically teach away from their combination to arrive at the invention as claimed. For example, *Tower* specifically teaches the use of “fine wire . . . made from a highly malleable material.” (See, ¶ 17 (emphasis added).) In addition, *Tower* teaches that the material is “fully annealed to remove as much spring memory as possible.” (*Id.*) This allows the balloon expandable stent of *Tower* to “be plastically and locally deformed thereby allowing the stent to be expanded to a first radial diameter and if need reexpanded, to a second or subsequent radial diameter which is larger than the first.” (*Id.* (emphasis added).) In fact, the disclosure of *Tower* apparently restricts its application to using only malleable materials: “[a]ccording to a preferred embodiment, wires consisting of a combination of platinum and iridium are used, though other malleable materials . . . can be substituted.” (*Id.* (emphasis added); see also, ¶ 26 (“Each fine wire is made from a soft and highly malleable material which has been fully annealed to remove as much spring memory as possible.”).)

In direct contrast, however, *Globerman* specifically teaches away from the use of solid wire as in *Tower*: “stents, grafts, or filters, have improved properties if the wire from which such devices are made is hollow, i.e., tubular, rather than solid.” (See, page 4 (emphasis added).) *Globerman* continues to discourage the use of solid wire by stating that “[w]hen solid wire is bent, the shape of the cross-section remains substantially unchanged, which means that the fibers

or elements of the wire are unevenly stressed.” (*Id.*) In addition, *Globerman* teaches away from the use of malleable or annealed materials as specifically taught by *Tower*: “[t]he tubular material useful according to the invention can comprise any suitable physiologically acceptable metallic material, such as stainless steel or an alloy. Especially useful are shape memory alloys, particularly nickel-titanium alloys known as nitinol.” (*See*, page 7 (emphasis added).) Moreover, the disclosure of *Globerman* is specifically tailored for self-expanding stents, and not balloon expandable stents like *Tower*: “the elastic property of the wire was used, by creating stress in the wire. The purpose for creating the stress was to reduce the stent’s diameter and restrain the stent, before insertion of the device into a patient’s body, whereupon, after the stent was inserted and the restraining means was removed, the stent expands and the stress releases.” (*See*, page 2.) Furthermore, *Globerman* only illustrates a spiral stent, which is more adept to self-expanding configurations, rather than a mesh stent such as the stent taught by *Tower*. (*See*, Figure 5.) In fact, the very problem to be solved by *Globerman* was forming a stent that could achieve “the high deformation needed . . . to reach minimal insertion profile” while staying within the range of recoverable strain of the material used in the stent. (*See*, page 2.) Specifically, “with the nitinol wire currently used there are limits as to how far the diameter of a stent can be decreased while staying within the same range of recoverable strain of the material.” (*Id.*)

Consequently, it would not have been obvious to one of ordinary skill in the art to combine the teachings of *Tower* with the teachings of *Globerman* to arrive at the invention as claimed in the present application. In fact, *Tower* and *Globerman* repeatedly teach away from such a modification. Accordingly, the disclosures of *Tower* and *Globerman* would lead a person of ordinary skill in the art away from combining their teachings together to arrive at the claimed invention. Therefore, Applicant respectfully requests withdrawal of the rejection under § 103.

The Office Action also rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. EP 1057460 (*Tower*) in view of U.S. Patent No. WO96/26682 (*Globerman*) and U.S. Patent No. 6,071,305 (*Brown*) as applied to claim 1 above, and further in view of U.S. Patent Publication No. 2002/0038146 (*Harry*). Applicant respectfully traverses the rejection.

The Office Action asserted that “Harry teaches pores varying in size on the stent. Harry also teaches pores that vary in shape on the stent.” (Office Action, page 3.) Apparently, the

Office Action is asserting that the “relief cuts” in stent struts as taught by *Harry* is the same as “a multiplicity of pores providing fluid communication between the one or more hollow core sections and the external environment,” as required by the claim 1 from which claims 7 and 8 depend. Applicant respectfully submits that *Harry* fails to disclose this limitation.

Rather, in direct contrast, *Harry* discloses an expandable stent formed by interconnected struts having relief cuts. The interconnected struts are not hollow, and each of the relief cuts extends through the entire thickness of a strut. (See, ¶¶ 38, 49.) Applicant respectfully submits that the relief cuts of *Harry* are not the same as “a multiplicity of pores providing fluid communication between . . . one or more hollow core sections and the external environment,” “wherein the multiplicity of pores vary in size or shape [or shape] with respect to one another,” as recited, in part, by claim 1 and claims 7 and 8, which depend upon claim 1, respectively. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 7 and 8 under § 103.

### **C. Conclusion**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

In view of the foregoing, Applicant believes the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner’s Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 15<sup>th</sup> day of August 2008.

Respectfully submitted,

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